IN THE HIGH COURTOF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

DRAFT NOTICE OF MOTION NO. OF 2007
WITH
APPEAL LODG. NO. 737 OF 2007
IN
COMPANY APPLICATION NO. 39 OF 2007
IN
COMPANY PETITION NO. 875 OF 2007.

Naval K. Bhasin ..Appellant
V/s
Nilkamal Plastic Ltd. & Ors. ..Respondents.

Mr. A.A. Kumbhokoni i/b M.J. Jamdar for the appellant.
Mr.K.V.Tambe for respondent No.2

CORAM : J.N.PATEL AND
A.A.SAYED, JJ.

DATE : 21ST SEPTEMBER, 2007.

P.C.

1. The Company application is filed impugning the order of the company Judge passed on 21st June,2007, wherein it permitted the applicant before Company Judge i.e. Rupee Co-operative Bank Ltd. which is a secured creditor of the company under liquidation i.e. Poona Beverages Pvt. Ltd. on the ground that the order directing the official liquidator to disburse the amount of Rs. 3,69,17,030 to the Rupee Co-operative Bank is not just and proper and at the most the amount which can be directed to be paid to the bank can be in the sum of Rs. 2,29,80,000 (Approximately).

2. The main issue raised in the appeal is that the

learned Company Judge has passed the order under Section 13(9) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, which is not applicable to the facts of the present case, as respondent is only secured creditor.

3. There is no dispute over the fact that the claim of the respondents secured creditors stands crystallised and the property of the company under restitution was disposed of by auction sale and confirmed by the Company Judge by the order dated 30th November, 2006 and an amount of Rs.6.25 crores has been received by the Official Liquidator.

4. We find no merits in the appeal on two counts. Firstly, the Earst-while Directors of the company have no say in the matter, secondly the principles enshrined in section 13(9) of the Securitisation Act on which reliance has been placed by the learned Company Judge is for the purpose of considering the preferential claims of the other persons, like the workmens' dues, which has to be taken care, though there may be contingency where more than one secured creditors may be claiming preference in discharge of their claim. We do not find that the impugned order in any way causes prejudice to the creditors and the learned Company

Judge has taken care of the workmens' dues by safeguarding their interest in the impugned order. Therefore, there is no merit in the appeal and the same is dismissed.

5. The learned Counsel for the respondent- bank submits that though. the company Judge directed the Official Liquidator to disburse the amount quantified in the order to the Bank, the Official Liquidator has adopted the procedure by sending a cheque by Registered Post A.D. rather than handing it over to the authorised Officers of the bank. We expect the Official Liquidator would adopt the means and modes which are convenient, effective and meaningful to comply the orders of Court as it is very obvious and such an instrument in dispatching to the bank by registered post A.D. will take a week's time. On the other hand if it is handed over to the Authorised Officers of the bank, the amount could have been credited within 24 hours. The appeal stands disposed of accordingly.

[J.N.Patel, J.]

[A.A.Sayed, J.]